

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

HEATHER SPENCER,
Plaintiff,

vs.

PFAU COCHRAN VERTETIS KOSNOFF
PLLC, a Washington company,
Defendant.

NO. 2:10-CV-01582

COMPLAINT FOR DAMAGES

JURY DEMAND

I. INTRODUCTION

1.1 Plaintiff Heather Spencer requests damages, liquidated damages, double damages, and attorneys' fees and costs for the wrongful and willful withholding of overtime wages by her former employer and Defendant, Pfau Cochran Vertetis Kosnoff PLLC.

II. PARTIES

2.1 Plaintiff Heather Spencer is an individual residing in Pierce County, Washington.

2.2 Defendant Pfau Cochran Vertetis Kosnoff PLLC is a duly registered and licensed Washington corporation that transacts business in Pierce County and throughout Washington State. Its registered agent is located within this judicial district.

III. JURISDICTION AND VENUE

3.1 Acts complained of herein occurred in Pierce County, Washington.

3.2 At all times material to this action, defendant Pfau Cochran Vertetis Kosnoff PLLC transacted business within this judicial district by designating its agent for service of process in the Western District of Washington and by maintaining offices within this judicial district.

3.3 At all times material to this action, defendant Pfau Cochran Vertetis Kosnoff PLLC had continuous and systematic contact with this judicial district.

3.4 Jurisdiction is proper pursuant to 28 U.S.C. § 1331 in that the claims alleged herein arise under the laws of the United States, pursuant to the Fair Labor Standards Act, 29 U.S.C. §§ 201-209. Plaintiff has a right to bring an action under the Fair Labor Standards Act pursuant to 29 U.S.C. 216(b).

1 3.5 This Court has supplemental jurisdiction pursuant to 28 U.S.C. § 1367
2
3
4 to hear and determine plaintiff's state law claims because those claims are related to
5
6 plaintiff's federal claims and arise out of a common nucleus and related facts.
7
8 Plaintiff's state law claims are related to plaintiff's federal law claims in that those
9
10 claims form part of the same case or controversy under Article III of the United
11
12 States Constitution.
13

14
15
16 3.6 Venue is proper in the Western District of Washington pursuant to 28
17
18 U.S.C. § 1391(b)(2) since some of the unlawful conduct that gives rise to these
19
20 claims occurred within the Western District of Washington.
21

22 23 **IV. FACTUAL BACKGROUND** 24

25
26 4.1 Defendant is an "employer" subject to statutes governing employment
27
28 and the payment of wages in the State of Washington, including Ch. 49.12 RCW,
29
30 Ch. 49.46 RCW, Ch. 49.48 RCW, and Ch. 49.52 RCW, and under Federal Law,
31
32 including the Fair Labor Standards Act. 29 U.S.C § 201 et seq.
33

34
35
36 4.2 Plaintiff was hired as a salaried employee of the defendant on
37
38 December 26, 2008. Plaintiff's primary supervisors were partners and owners
39
40 Darrell L. Cochran and Thomas B. Vertetis.
41

42
43 4.3 Prior to commencing her employment with the defendant, plaintiff
44
45 worked as a salaried employee at a law firm that had principle offices in Seattle and
46
47 Tacoma. Here, plaintiff was paid a usual and

1 customary wage based on more than a decade of employment and experience in her
2
3 field. Additionally, plaintiff was vested and participated in profit sharing.
4

5
6 4.4 Defendant recruited plaintiff's services in the fall of 2008. Defendant
7
8 promised plaintiff that she would receive the same salary and benefits that she was
9
10 then receiving at her current job. At that time, plaintiff's salary and benefits were
11
12 predicated on a forty hour work week. Defendant was aware of the conditions of
13
14 plaintiff's employment when the employment offer was made.
15
16

17
18 4.5 Plaintiff routinely worked a minimum 85-90 hours per week for the
19
20 defendant. She was not properly paid overtime. She was paid a flat fee amount for
21
22 her work even though she was not exempt from the overtime requirements of the
23
24 Washington Minimum Wage Act or the Fair Labor Standards Act.
25
26

27
28 4.6 Plaintiff's pay stubs reflect that her flat fee amount was predicated on
29
30 an hourly rate of \$33.64. Defendant's contention that plaintiff was a salaried
31
32 employee exempt from the Washington Minimum Wage Act or the Fair Labor
33
34 Standards Act is inconsistent with the hourly wage calculation on plaintiff's pay
35
36 stubs. In addition, as a matter of law, plaintiff is not exempt from the overtime pay
37
38 requirements of state and federal law, thus requiring defendant to compensate
39
40 plaintiff \$50.46 per hour (time and a half) for each of her overtime hours.
41
42

43
44 4.7 Defendant knew that plaintiff was working in excess of 40 hours per
45
46 week without receipt of overtime or regular minimum
47

1 wage compensation for all hours worked. In fact, on November 2, 2009, defendant
2
3 nominated plaintiff for the 2009 NALS of Pierce County Award of Excellence,
4
5 noting that plaintiff routinely worked sixteen hour days for weeks at a time.
6
7 Moreover, defendant provided overtime compensation for two similarly situated
8
9 employees after they complained about not being paid for the overtime hours they
10
11 worked.
12
13

14
15
16 4.8 After similarly situated employees complained about not being paid
17
18 for overtime hours worked, defendant attempted to circumvent a wage claim by
19
20 plaintiff. Defendant promised to alter plaintiff's employment status by giving her
21
22 managerial responsibilities. In addition, plaintiff was promised a large wage
23
24 increase. Defendant never altered plaintiff's employment status, plaintiff was never
25
26 given additional managerial responsibilities, and plaintiff never received a wage
27
28 increase.
29
30
31

32
33 4.9 Plaintiff requested her promised wage increase and the addition of
34
35 managerial responsibilities no less than four times between November 2009 and
36
37 February 2010. Defendant was not responsive to any of these requests.
38
39
40

41 4.10 Defendant terminated plaintiff's employment on February 26, 2010.
42
43 Plaintiff was told by her supervisor that she was being terminated as part of a firm
44
45 restructuring plan.
46
47

1 4.11 In failing to pay required compensation for plaintiff's overtime,
2
3
4 defendant has acted willfully and with the intent of depriving plaintiff of her legally
5
6 required wages.
7

8
9
10 **V. CAUSES OF ACTION**
11

12 **A. FIRST CAUSE OF ACTION – FAILURE TO PAY OVERTIME WAGES**
13 **IN VIOLATION OF THE FAIR LABOR STANDARDS ACT**
14

15
16 5.1 Plaintiff realleges paragraphs 1.1 through 4.11 of the Complaint and
17
18 hereby incorporates the same by reference.
19

20
21 5.2 Defendant failed to pay overtime wages to plaintiff even though it is
22
23 clear that she is entitled to overtime for each workweek that she worked in excess of
24
25 forty hours.
26

27
28 5.3 Defendant's failure to pay overtime to plaintiff was a willful violation of
29
30 the Fair Labor Standards Act because defendant was aware that plaintiff was not
31
32 exempt from the overtime requirements and failed to pay plaintiff overtime. In fact,
33
34 on more than one occasion, defendant provided overtime compensation to similarly
35
36 situated employees and failed to provide such compensation to plaintiff.
37
38

39
40 5.4 Defendant willfully violated the Fair Labor Standards Act, and relevant
41
42 state statutes, thereby entitling plaintiff to compensatory damages including damages
43
44 for lost pay and benefits, liquidated damages, and attorneys' fees and costs.
45
46
47

1 **B. SECOND CAUSE OF ACTION – FAILURE TO PAY OVERTIME**
2 **WAGES IN VIOLATION OF THE WASHINGTON MINIMUM WAGE**
3 **ACT**
4

5
6 6.1 Plaintiff realleges paragraphs 1.1 through 5.4 of the Complaint and
7
8 hereby incorporates the same by reference.
9

10
11 6.2 Plaintiff systematically, and as a matter of the defendant's uniform and
12
13 regular policy, worked more than eight hours daily and also, on one or more
14
15 occasions, did not receive at least a thirty minute lunch break for each five hours
16
17 worked daily as required by the Revised Code of Washington §§ 49.12.005 et seq., §§
18
19 49.48.010 et seq., §§ 49.46.020 et seq., §§ 49.52.010 et seq.
20
21

22
23 6.3 Defendant systematically, and as a matter of corporate policy in its
24
25 routine course of business, failed to pay plaintiff her promised benefits and wages as
26
27 required by the Revised Code of Washington §§ 49.12.005 et seq., §§ 49.48.010 et
28
29 seq., §§ 49.46.020 et seq., §§ 49.52.010 et seq.
30
31

32
33 6.4 Defendant's conduct constitutes unlawful failure to record and report
34
35 hours worked, failure to pay minimum wages, failure to pay overtime, and willful
36
37 withholding of wages in violation of statutes governing the payment of wages in the
38
39 State of Washington, including Ch. 49.12 RCW, Ch. 49.46 RCW, Ch. 49.48 RCW,
40
41 and Ch. 49.52 RCW.
42
43
44
45
46
47

VI. PRAYER FOR RELIEF

WHEREFORE Plaintiff prays for relief as follows:

- A. General damages according to proof in an amount that is yet to be ascertained;
- B. Special damages according to proof in an amount that is yet to be ascertained;
- C. Interest on all sums awarded including prejudgment interest;
- D. Statutory penalties;
- E. Reasonable attorney's fees and costs of suit; and
- F. Whatever further and additional relief the court shall deem just and equitable.

VIII. JURY DEMAND

Plaintiff requests a jury trial.

1 DATED this 29th day of September, 2010
2
3

4 /s/ Donald W. Heyrich, WSBA #23091
5
6

7
8 **HEYRICH KALISH MCGUIGAN PLLC**

9 PUGET SOUND PLAZA

10 1325 Fourth Avenue, Suite 540

11 Seattle, WA 98101

12 Tel: (206) 838-2504

13 Fax: (206) 838-2505

14 E-mail: DHeyrich@hkmlegal.com
15
16

17
18 Attorneys for Plaintiff Heather Spencer
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47